REMARKS/ARGUMENTS

Claim Status

Claims 60-118 are pending. Claim 87 is currently amended to depend from claim 70 in order to correct antecedent basis issues. No new matter has been added.

Restriction

The Examiner is requiring election of a single Group of claims for further prosecution. The Claims have been divided into Groups as follows:

Group I: Claims 60-115, drawn to a cosmetic process for softening wrinkles of wrinkled skin comprising applying to said wrinkled skin a cosmetic product comprising in a physiologically acceptable medium suitable for topical application to the skin of the face: from 0.1 to 20% by weight, based upon the total weight of the composition of at least one tensioning agent.

Group II: Claim 116, drawn to a cosmetic composition comprising a physiologically acceptable medium for topical application to the skin of the face: from 0.1 to 20% by weight based on the total weight of the composition of at least one tensioning agent in the form of colloid particles of inorganic fillers and at least one dispersion of solid particles of a grafted ethylenic polymer in a liquid fatty phase.

Group III: Claim 117, drawn to a method of using the dispersion of solid particles of a graft ethylenic polymer as defined according to claim 60 for improving the persistence of the tensioning effect provided by said tensioning agent.

Group IV: Claim 118, drawn to a method of using the dispersion of solid particles of grafted ethylenic polymer as defined in claim 60 in a cosmetic agent, an aqueous dispersion of colloidal inorganic particles, for preventing whitening of the skin.

In addition, the Examiner is requiring an election of species as follows:

A) Liquid fatty phase (at least claims 80-103, 109 and 110 encompassed thereon);
B) Tensioning Agent (at least claims 65-67, 91 and 92 encompassed thereon); or
C) Grafted Ethylenic Polymer and monomers (at least claims 68-79 and103-108 encompassed thereon).

Applicants elect, with traverse, Group I, Claims 60-115 (drawn to a cosmetic process for softening wrinkles of wrinkled skin comprising applying to said wrinkled skin a cosmetic product comprising in a physiologically acceptable medium suitable for topical application to the skin of the face: from 0.1 to 20% by weight, based upon the total weight of the composition of at least one tensioning agent), for examination.

Applicants also provisionally elect the following species, for examination purposes only;

A) Liquid fatty phase: the non-silicone fatty phase as defined in claim 81 (at least claims 80-103, 109 and 110 encompassed thereon);
B) Tensioning Agent: the colloidal particles of inorganic fillers (at least claims 65-67, 91 and 92 encompassed thereon); or
C) Grafted Ethylenic Polymer and monomers: the grafted acrylic polymers as defined in claim 69 (at least claims 68-79 and103-108 encompassed thereon).

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required (MPEP §803). The burden is on the Examiner to provide reasons and/or examples to support any conclusion in regard to patentable distinction (MPEP §803). Moreover, when citing lack of unity of invention in a national stage application, the Examiner has the burden of explaining why each group lacks unity with each other group specifically describing special technical features in each group (MPEP § 1893.03(d)).

The Office has asserted that Groups I - V do not relate to a single general inventive concept under PCT Rule 13.1 because under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

> "The cosmetic composition if taught by US Patent No. 5,219,560 (Suzuki, 1993) and WO 03/082454 (Gotou, 2003), utilizing US Publication no. 2005/0106198 (Gotou, 2005) as the English translation. Example 23 of Suzuki teaches a milky lotion (i.e., cosmetic composition that may be applied to the skin of the phase; column 31, lines 45-end; column 32, lines 1-35). The composition comprises water (i.e. physiology acceptable medium). The composition comprises an acryl-silicone copolymer (i.e. grafted ethylenic polymer) in an amount of 3.2% by weight which was added to a heated oil phase comprising stearyl alcohol, lipophilic glycerol monostearate, and isoparaffin. The composition also comprises inorganic particles, titanium dioxide in an amount of

> 0.5% by weight. Suzuki does not teach that the titanium dioxide particles were colloidal particles. Gotou teaches that titanium oxides are colloidal particles which are dispersed (English translation, Gotou, page 3, paragraph 32). Gotou teaches that finely dispersed particles are utilized to cover up liver spots and other blemishes, correct skin color, tint the skin to an attractive color, protect the skin from sunburn by cutting ultraviolet rays, and to absorb sweat and sebum (English translation, Gotou, page 4, paragraphs 39-44). It would have been *prima facie* obvious to a person of ordinary skill in the art at the time the invention was made to have substituted Suzuki's titanium dioxide with the colloidal titanium of Gotou because the colloidal titanium dioxide particles of Gotou provides numerous desirable features to skin."

Annex B of the Administrative Instructions under the PCT at (b) Technical Relationship states:

> "The expression "special technical features" is defined in Rule 13.2 as meaning those technical features that defines a contribution which each of the inventions, considered as a whole, makes over the prior art. The determination is made on the contents of the claims as interpreted in light of the description and drawings (if any)."

Applicants respectfully submit that the Examiner has not provided any indication that the contents of the claims *interpreted in light of the description* was considered in making the assertion of a lack of unity and therefore has not met the burden necessary to support the assertion.

Furthermore, 37 C.F.R. § 1.475(b) states in pertinent part:

> "An international or a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories:
> (2) A product and a process of use of said product;. . ."

In addition, The MPEP §806.03 states:

> "Where the claims of an application define the same essential characteristics of a *single* disclosed embodiment of an invention, restriction there between should never be required. This is because the claims are not directed to distinct inventions; rather they are different definitions of the same disclosed subject matter, varying in breadth or scope of definition."

Applicants respectfully submit that the Office has not considered the relationship of the inventions of Groups I-IV with respect to 37 C.F.R. § 1.475(b)(2) and MPEP §806.03. Therefore the burden necessary according to MPEP § 1893.03(d) to sustain the conclusion that the groups lack of unity of invention has not been met.

Accordingly, and for the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the requirement for restriction. Applicants therefore request that the requirement for restriction be withdrawn.

Applicants make no statement regarding the patentable distinctness of the species, but note that for restriction to be proper, there must be a patentable difference between the species as claimed. MPEP § 808.01(a). The Office has not provided any reasons or examples to support a conclusion that the species are indeed patentably distinct. Accordingly, Applicants respectfully submit that the restriction is improper, and Applicants' election of species is for examination purposes only. Applicants respectfully request that the election requirement be withdrawn.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and early notice thereof is earnestly solicited.

Respectfully Submitted,

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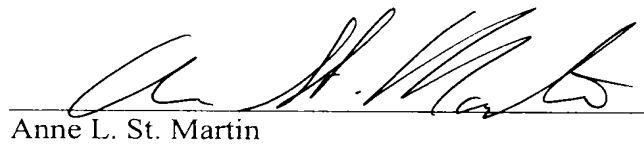

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